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POSTAL SERVICE

39 CFR Part 961

Rules of Practice in Proceedings Under Section 5 of the Debt Collection Act

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document contains the final revisions to the rules of practice before the Judicial Officer in proceedings under section 5 of the Debt Collection Act. These rules of procedure completely replace and supersede the prior rules.

DATES: *Effective Date:* June 2, 2014.

FOR FURTHER INFORMATION CONTACT: Associate Judicial Officer Gary E. Shapiro, (703) 812-1910.

SUPPLEMENTARY INFORMATION: On February 18, 2014, the Judicial Officer Department published for comment proposed revisions to the rules governing practice in proceedings under section 5 of the Debt Collection Act of 1982 (79 FR 9120-21). Following the receipt of comments, the Judicial Officer has made further revisions to the original proposed rules, as discussed below, and has determined that it is appropriate to adopt the rules of practice, as revised. The Judicial Officer Department also has determined that it is appropriate to make these rules of practice effective on June 2, 2014, in the interest of orderly public administration.

A. Executive Summary

Part 961 of title 39, Code of Federal Regulations, contains the rules of practice in proceedings under section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C.

5514, in which the Judicial Officer or an assigned Hearing Official provides the final agency adjudication for debt collection assessments by administrative salary offset issued by the Postal Service seeking to collect a debt owed it by a current employee. This authority is delegated by the Postmaster General. Although these rules provide a complete replacement for the former rules, the changes are not considered to affect the rights of the parties in a substantive way. Rather, the rules are revised to conform to current practices and to clarify the procedures.

B. Background

The Judicial Officer Department published for comments proposed revisions to the rules governing proceedings under section 5 of the Debt Collection Act of 1982 in the Federal Register on February 18, 2014 (79 FR 9120-21). This notice announces the intention to promulgate final rules of procedure, following our review and consideration of all comments. The period for comments closed on March 20, 2014. We considered all comments received, revised the proposed rules as explained below, and promulgate our final rules of procedure.

C. Summary of Comments and Changes

The Judicial Officer Department received comments from one source: a labor union representing many Postal Service employees who are parties to Debt Collection Act litigation before the Judicial Officer Department. We carefully considered each comment and adopted some of the suggestions made. All comments are discussed below:

§ 961.4 Employee petition for a hearing.

A comment noted that the proposed rule provided the Hearing Official with discretion to resolve a dispute where the Postal Service has not initiated involuntary administrative salary offsets by issuing a Notice as required by the Debt Collection Act. This rule change reflects our experience that the Postal Service sometimes collects alleged debts by administrative salary offset without having issued the proper Notice. In such circumstances, our practice has been to order a refund of the improperly collected offset, and to offer the employee the choice whether to proceed to an adjudication on the merits without additional procedural requirements, or to dismiss the case without prejudice (or sometimes suspend the case) while requiring the Postal Service to issue the Notice. Retaining the case ensures that the employee remains protected against collection activity without undue delay of the adjudication. As explained however, at the option of the employee, we will dismiss the case as premature, or suspend it, and require that the Notice be issued. In either event, we will not permit collection activity to commence until our adjudication is final or the Postal Service has complied with the statute. As we believe that the revision is consistent with the statute, protects the rights of the employee/debtor, and conforms the rule to existing practice, we have declined to make a change in response to the comment.

Another comment expressed concern about the proposed elimination of former paragraphs (b)(4) and (5) from § 961.4. Deleted paragraph (b)(4) provided for an employee to include in his or her petition whether an oral hearing is requested, or alternatively, a hearing based solely on written submissions. Deleted paragraph (b)(5) provided for an employee requesting an oral hearing to include a statement of the

evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the employee expects to call; the proposed city for the hearing site, with justification for holding the hearing in that city; and recommended alternative dates for the hearing; which should be within 40 days from filing the Petition. These deletions are part of several former requirements for inclusion in an employee petition. Our objective was to simplify petition requirements and defer obtaining certain information from an employee until a later stage of the proceeding when the case is developed further. The requirements cited in the comment were deleted because at the petition stage, it often is premature to include such information resulting in incomplete petitions which unnecessarily delays the process. Both parties are given opportunities to express their preferences concerning the type of hearing requested which the Hearing Official will consider in deciding the most appropriate form for a hearing. We agree with the comment that the employee should be permitted to present arguments in support of his or her position regarding whether an oral or written hearing should occur. While that reflects our existing process, we have modified the language of the rules to make it explicit, and have done so in the most appropriate paragraph – § 961.8(d), which has been changed to require the Hearing Official to consider the positions of the parties before determining whether an oral hearing (or alternatively, a hearing solely on written submissions) shall be conducted, and setting the place, date, and time for such a hearing. Where a hearing on written submissions is ordered, the Hearing Official explains the process thoroughly to both parties. Therefore, an additional change in that regard is not necessary.

§ 961.8 Hearing Official authority and responsibilities.

A comment expressed concern about the proposed elimination of the following sentence from § 961.8: “The proceedings must be expedited to ensure issuance of the final decision no later than 60 days after the filing of the employee’s hearing Petition.” Our case law precedent establishes that the sixty-day timeframe referenced in the prior regulations and in the Debt Collection Act is not a statutory deadline or requirement that can be enforced by a party. See *Celeste Guice*, P.S. Docket No. DCA 12-19 (May 11, 2012). Additionally, our experience has been that both parties commonly request extensions or do not comply with deadlines in these cases making decisions within sixty days impossible. While the Judicial Officer Department’s policy is to issue decisions in a timely manner after the record closes, a specific hard deadline is not practical. Furthermore, employees who have filed timely petitions remain protected against involuntary administrative salary offsets until the case is decided. Therefore, we do not believe that re-insertion of a sixty-day time period is necessary, nor does it reflect our case law or actual practice. However, to address the concern reflected in this comment, we have added language to § 961.8(i) to require the Hearing Official to issue the decision as soon as practicable after the close of the record, and to stay collection activity until the decision has issued.

D. Effective Date

These revised rules will govern proceedings under part 961 docketed on or after June 2, 2014.

List of Subjects in 39 CFR Part 961

Claims, Government employees, Wages.

For the reasons stated in the preamble, the Postal Service hereby revises 39 CFR part 961 as set forth below:

PART 961—RULES OF PRACTICE IN PROCEEDINGS UNDER SECTION 5 OF THE DEBT COLLECTION ACT

Sec.

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Authority: 39 U.S.C. 204, 401; 5 U.S.C. 5514.

§ 961.1 Authority for rules.

These rules are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§ 961.2 Scope of rules.

The rules in this part apply to the hearing provided by section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514, challenging the Postal Service's determination of the existence or amount of an employee debt to the Postal Service, or of the terms of the employee's debt repayment schedule. In addition, these rules apply to a hearing under section 5 of the Debt Collection Act when an Administrative Law Judge or an Administrative Judge in the Judicial Officer Department is designated as the Hearing Official for a creditor Federal agency other than the Postal Service pursuant

to an agreement between the Postal Service and that agency. In such cases, all references to Postal Service within these rules shall be construed to refer to the creditor Federal agency involved.

§ 961.3 Definitions.

As used in this part:

(a) *Employee* refers to a current employee of the Postal Service who is alleged to be indebted to the Postal Service; or to an employee of another Federal agency who is alleged to be indebted to that other creditor Federal agency and whose hearing under section 5 of the Debt Collection Act is being conducted under these rules.

(b) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(c) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or other qualified person not under the control or supervision of the Postmaster General, who is designated by the Judicial Officer to conduct the hearing under section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514.

(d) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the United States Postal Service.

(e) *Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act* refers to the formal written notice required by section 5 of the Debt Collection Act, including the provision of notice of the procedures under this Part, before involuntary collection deductions can be taken from an employee's salary.

(f) *Postmaster/Installation Head* refers to the Postal Service official who is authorized under the Postal Service Employee and Labor Relations Manual to make the initial determination of employee indebtedness and to issue the “Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act.”

(g) *Recorder* refers to the Recorder, Judicial Officer Department, U.S. Postal Service, located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078. The Recorder's telephone number is (703) 812-1900, and the fax number is (703) 812-1901.

§ 961.4 Employee petition for a hearing.

(a) If an employee desires a hearing, prescribed by section 5 of the Debt Collection Act, to challenge the Postal Service's determination of the existence or amount of a debt, or to challenge the involuntary repayment terms proposed by the Postal Service, the employee must file a written, signed petition with the Recorder, on or before the fifteenth (15th) calendar day following the employee's receipt of the Postal Service's “Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act.” The Hearing Official, in his or her discretion may waive this deadline upon a demonstration of good cause. In the event that the Postal Service initiated involuntary administrative salary offsets without having issued a Notice as required by the Debt Collection Act, the Hearing Official, in his or her discretion, may retain authority to resolve the debt assessment as if a Notice had been issued, and may order the Postal Service to return any improperly offset money.

(b) The hearing petition shall include the following:

(1) The words, “Petition for Hearing under the Debt Collection Act,” prominently captioned at the top of the first page;

(2) The name of the employee, the employee's work address, home address, work telephone number, home telephone number, and email address, if any, or other address and telephone number at which the employee may be contacted during business hours;

(3) A statement of the date on which the employee received the "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act," and a copy of the Notice;

(4) A statement indicating whether the employee challenges:

(i) The existence of the debt identified in the Notice of Involuntary Administrative Salary Offsets;

(ii) the amount of the debt identified in the Notice; and/or

(iii) the involuntary repayment terms identified by the Postal Service in the Notice.

For each challenge, the employee's petition shall indicate the basis of the employee's disagreement. The employee should identify and explain the facts, evidence, and legal arguments which support his or her position;

(5) Copies of all records in the employee's possession which relate to the debt; and

(6) If an employee contends that the Postal Service's proposed offset schedule would result in a severe financial hardship on the employee, his or her spouse, and dependents, the employee shall identify an alternative offset schedule. As directed by the Hearing Official, the employee shall provide a statement and supporting documents indicating the employee's financial status. This statement should address total income

from all sources; assets; liabilities; number of dependents; and expenses for food, housing, clothing, transportation, medical care, and exceptional expenses, if any.

(c) The employee shall file with the Recorder, any additional information directed by the Hearing Official.

§ 961.5 Effect of filing a petition.

Upon receipt and docketing of the employee's petition for a hearing, further collection activity by the Postal Service must cease, as required by section 5 of the Debt Collection Act until the petition is resolved by the Hearing Official.

§ 961.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing.* All documents relating to the Debt Collection Act hearing proceedings must be filed by the employee or the General Counsel's designee with the Recorder. (Normal Recorder office business hours are between 8:45 a.m. and 4:45 p.m., Eastern Time.) Unless otherwise directed by the Hearing Official, the party filing a document shall send a copy thereof to the opposing party.

(b) *Docketing.* The Recorder will maintain a record of Debt Collection Act proceedings and will assign a docket number to each such case. After notification of the docket number, the employee and the Postal Service's representative should refer to it on any further filings regarding the petition.

(c) *Time computation.* A filing period under the rules in this Part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day. Requests for extensions of time shall be made in

writing prior to the date on which the submission is due, state the reason for the extension request, represent that the moving party has contacted the opposing party about the request, or made reasonable efforts to do so, and indicate whether the opposing party consents to the extension. Requests for extensions of time submitted after the date on which the submission was due shall explain why the moving party was unable to request an extension prior to the deadline.

(d) *Representation of parties.* The representative of the Postal Service, as designated by the General Counsel, shall file a notice of appearance as soon as practicable, but no later than the date for filing the answer. If an employee has a representative, he or she also shall file a notice of appearance as soon as practicable, and further transmissions of documents and other communications by and with the employee shall be made through his or her representative.

§ 961.7 Answer to petition.

Within 15 days from the date of receiving the petition, the Postal Service's representative shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service's debt claim, and/or the administrative salary offset schedule proposed by the Postal Service for collecting any such claim. The answer shall provide a clear and thorough description of the basis for the Postal Service's determination of the alleged debt, its calculation of the amount of the alleged debt, and/or its proposed offset schedule.

§ 961.8 Hearing Official authority and responsibilities.

The Hearing Official's authority includes, but is not limited to, the following:

(a) Ruling on all motions or requests by the parties.

(b) Issuing notices, orders or memoranda to the parties concerning the hearing proceedings.

(c) Conducting telephone conferences with the parties to expedite the proceedings. The Hearing Official will prepare a Memorandum of Telephone Conference, which shall be transmitted to both parties and which serves as the official record of that conference.

(d) After considering the positions of the parties, determining whether an oral hearing (or alternatively, a hearing solely on written submissions) shall be conducted, and setting the place, date, and time for such a hearing.

(e) Administering oaths or affirmations to witnesses.

(f) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded. The Hearing Official in his or her discretion may examine witnesses to ensure that a satisfactory record is developed.

(g) Establishing the record in the case. The weight to be attached to any evidence of record will rest within the discretion of the Hearing Official. Except as the Hearing Official may otherwise order, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the written record, after notification by the Hearing Official that the record is closed. The Hearing Official may require either party, with appropriate notice to the other party, to submit additional evidence on any relevant matter.

(h) Granting reasonable time extensions or other relief for good cause shown in the Hearing Official's sole discretion.

(i) Issuing the final decision. The decision must include the determination of the amount and validity of the alleged debt and, where applicable, the repayment schedule. The Hearing Official will issue the decision as soon as practicable after the close of the record. Collection activity remains stayed until the decision has issued.

§ 961.9 Opportunity for oral hearing.

An oral hearing shall be conducted in the sole discretion of the Hearing Official. An oral hearing may be conducted in-person, by telephone, by video conference, or other appropriate means as directed by the Hearing Official. When the Hearing Official determines that an oral hearing shall not be conducted, the decision shall be based solely on the written submissions. The Hearing Official shall arrange for the recording and transcription of an oral hearing, which shall serve as the official record of the hearing. In the event of an unexcused absence, the hearing may proceed without the participation of the absent party.

§ 961.10 Effect of Hearing Official's decision; motion for reconsideration.

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of post-hearing briefs, if any, the Hearing Official shall issue a written decision, which shall include the findings of fact and conclusions of law, relied upon.

(b) The Hearing Official shall send each party a copy of the decision. The Hearing Official's decision shall be the final administrative determination on the employee's debt or repayment schedule. No reconsideration of the decision will be allowed unless a motion for reconsideration is filed within 10 days from receipt of the

decision and shows good cause for reconsideration. Reconsideration will be allowed only in the discretion of the Hearing Official. A motion for reconsideration by the employee will not operate to stay a collection action authorized by the Hearing Official's decision.

§ 961.11 Consequences for failure to comply with rules.

(a) The Hearing Official may determine that the employee has abandoned the right to a hearing, and that administrative offset may be initiated if the employee files his or her petition late without good cause; or files a withdrawal of the employee's petition for a hearing.

(b) The Hearing Official may determine that the administrative offset may not be initiated if the Postal Service fails to file the answer or files the answer late without good cause; or files a withdrawal of the debt determination at issue.

(c) If a party fails to comply with these Rules or the Hearing Official's orders, the Hearing Official may take such action as he or she deems reasonable and proper under the circumstances, including dismissing or granting the petition as appropriate.

§ 961.12 Ex parte communications.

Ex parte communications are not allowed between a party and the Hearing Official or the Official's staff. Ex parte communication means an oral or written communication, not on the public record, with one party only with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

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